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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,760	02/08/2006	John Hatrick-Smith	550639.00005	5904
26710 7590 07/27/2010 QUARLES & BRADY LLP 411 E. WISCONSIN AVENUE SUITE 2040 MILWAUKEE, WI 53202-4497				
EXAMINER				
FETSUGA, ROBERT M				
ART UNIT		PAPER NUMBER		
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07/27/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

pat-dept@quarles.com

Office Action Summary

Application No.

10/539,760

Applicant(s)

HATRICK-SMITH ET AL.

Examiner

Robert M. Fetsuga

Art Unit

3993

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2010.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4, 12-14 and 22-25 is/are pending in the application.
4a) Of the above claim(s) 12-14 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1, 4 and 22-25 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 06/20/2005 & 12/11/2009 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 06/21/2010
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "generally vertically extending hollow mounting neck which... enters into an aperture in the bath wall or rim" set forth in claim 1 (lns. 11-14) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the

applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. Claims 1, 4 and 22-25 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 1 recites "each fitting comprising a generally vertically extending hollow mounting neck which... enters into an aperture in the bath wall or rim... by which the fitting is pivotally mounted about a generally vertical axis" (lns. 11-17). Lines 23-26 of the claim are also noted. This subject matter is not found in the originally filed disclosure and is therefore considered to be new matter. No vertical axis has been disclosed.

Applicant argues at page 10 of the response filed June 21, 2010 that the pivot direction P depicted in Fig. 3A clearly defines a generally vertical axis. The examiner disagrees. Page 5 of the instant specification has again been considered, but no discussion of a vertical axis is described therein. Furthermore, Fig. 3A also depicts another pivot direction Q in

combination with direction P, thus apparently precluding a generally vertical axis. In any event, claim 1 recites much more than just a generally vertical axis, as noted. Applicant's argument is unpersuasive.

3. Claims 1, 4 and 22-25 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 1 recites a "not extending beyond the bath wall or a rim section" water flow feature (lns. 21-22). This subject matter is not found in the originally filed disclosure and is therefore considered to be new matter. No angle restriction has been disclosed. In fact, the outlets 5 of the fittings 4 as depicted in Fig. 3A would appear capable of being directed in contradiction to this claim limitation due to pivot directions P and Q.

Applicant's indication, at page 9 of the response, of disclosure support for this claim limitation is acknowledged. However, the claim language does not appear reflective of the disclosure noted by applicant.

4. Claims 1, 4 and 22-25 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 1 recites "said fittings being pivotally moveable... from said one pivotal position towards one another" (lns. 23-25). This subject matter is not found in the originally filed disclosure and is therefore considered to be new matter. The fittings 4 are disclosed merely as being pivotally mounted in the collar 7 which in turn is fixed in an aperture in the bath wall 1 (spec., pg. 5, lns. 21-24).

Applicant argues at page 10 of the response that the pivot direction P depicted in Fig. 3A clearly defines this fitting movement. The examiner disagrees. Page 5 of the instant specification has again been considered, but no discussion of a fitting movement is described therein. Furthermore, Fig. 3A also depicts another pivot direction Q in combination with direction P, and Fig. 3B appears to depict differently structured fittings 4 as well as a different structural relationship between the fittings and the bath wall/section 1. Applicant's argument is unpersuasive.

5. Claims 1, 4 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites a "not extending beyond the bath wall or a rim section" water flow feature (lns. 21-22). Given the apparent ability of the fitting 4 to pivot in two directions where water flow could violate the claim limitation, the metes and bounds of this recitation is not ascertainable.

Claim 1 is unclear as to whether the "bath wall" is intended to be part of the claimed combination since structure of the "fitting" is defined as being connected thereto (lns. 21-22), but no positive structural antecedent basis therefor has been defined. The preamble term "bath" does not necessarily define any particular structure.

Claim 4 lacks sufficient antecedent basis for "the upper body water outlets".

Claim 22 is unclear as to the relationship between the "end wall section" on line 1 thereof, and the "wall of the bath" on line 3 of claim 1.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3993

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1 and 22, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Isenberg, Sandham and Kenney.

The Isenberg reference discloses a bath comprising: an upper body water outlet fitting 10 including a generally vertically extending hollow mounting neck 18; and an end wall section (pg. 1, col. 2, lns. 37-39). The Isenberg fitting is capable of being positioned wherever one desires (pg. 2, col. 1, lns. 19-26), thus meeting the functional recitations in claim 1 directed towards a bather. Therefore, Isenberg teaches all claimed elements except for the provision of two fittings oriented to prevent water flow exterior to the bath.

Although the Isenberg bath does not include a second fitting, as claimed, attention is directed to the Sandham

reference which discloses an analogous bath which further includes two fittings 19. Therefore, in consideration of Sandham, it would have been obvious to one of ordinary skill in the bath art to associate a second fitting with the Isenberg bath in order to provide better coverage of a bather. Furthermore, to the extent the functional language recited at lines 2-10 in claim 1 can be considered to structurally distinguish the Isenberg disclosure, the choice of fitting positioning would appear an obvious choice to be made depending upon desired coverage. Still further, the Kenney reference is cited for teaching that it is desirable to direct shower water such that it does not splash outside a tub-type bath.

8. Claims 1, 4 and 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Isenberg, Sandham and Kenney as applied to claims 1 and 22 above, and further in view of Gardenier et al. and Leaverton et al.

Re claim 4, although the outlet fittings of the Isenberg bath are not elongate, as claimed, attention is directed to the Gardenier et al. (Gardenier) reference which discloses an analogous bath which further includes outlet fittings 28 which are elongate (Fig. 4). Therefore, in consideration of Gardenier, it would have been obvious to one of ordinary skill

in the bath art to associate an elongate shape with the Sandham outlet fittings in order to enhance hydrotherapy.

Re claim 23, although the Isenberg bath does not include a pump/circulation system, as claimed, attention is again directed to Gardenier which discloses a pump/circulation system (col. 4 lns. 30-41). Therefore, in further consideration of Gardenier, it would have been obvious to one of ordinary skill in the bath art to associate a pump/circulation system with the Isenberg bath in order to enhance hydrotherapy.

Re claim 24, although the Isenberg bath does not include a pillow, as claimed, attention is yet again directed to Gardenier which discloses a head rest 130 (Fig. 11). Therefore, in still further consideration of Gardenier, it would have been obvious to one of ordinary skill in the bath art to associate a head rest with the Isenberg bath in order to enhance comfort. Moreover, it would have been obvious to construct the head rest of soft material (if not already) in order to further enhance comfort. A soft head rest would meet the "pillow" limitation recited in the claim.

Re claim 25, although the Isenberg bath does not include spa outlets, as claimed, attention is directed to the Leaverton et al. (Leaverton) reference which discloses an analogous bath which further includes spa outlets 72. Therefore, in

consideration of Leaverton, it would have been obvious to one of ordinary skill in the bath art to associate spa outlets with the Isenberg bath in order to enhance hydrotherapy.

Re claim 1, both Gardenier and Leaverton teach the desirable positioning of outlet fittings to direct water onto the shoulders of a user. See Gardenier at Fig. 11 and Leaverton at column 3, lines 33-37.

9. Applicant's arguments with respect to claim 1 at pages 12-15 of the response have been considered, but are moot in view of the new ground(s) of rejection. The argued "generally vertically extending hollow mounting neck" is fairly taught by Isenberg.

10. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

11. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened

statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday. The Office central fax number is 571/273-8300.

/Robert M. Fetsuga/
Robert M. Fetsuga
Primary Examiner
Art Unit 3751